

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS,)	
PLAINTIFF)	
)	
v.)	C.A. No. 04-30126-MAP
)	
CARDIAC SCIENCE, INC.,)	
ET AL.,)	
DEFENDANTS)	

MEMORANDUM AND ORDER REGARDING
PENDING MOTIONS

(Dkt. Nos. 215, 219, 220, 222, 223,
225, 226, 230, 234, and 239)

October 31, 2006

PONSOR, D.J.

This is a suit brought by pro se Plaintiff Donald C. Hutchins against Cardiac Science, Inc. ("Cardiac Science") and Compliant Corporation ("Compliant"). Plaintiff alleges that Cardiac Science is liable for copyright and patent infringement, abuse of process, and tortious interference with contract, and that Compliant is liable for fraud, fraudulent misappropriation and sale of patent, and breach of contract. Defendants deny Plaintiff's allegations and have asserted counterclaims seeking damages for breach of contract, abuse of process, tortious interference with contract, and interference with prospective advantage.

Ten motions in this case are presently pending. The court's rulings on these motions are as follows:

1. Plaintiff's Motion to Compel Compliant to Provide

Adequate Provision for Damages Under Massachusetts and Delaware Corporate Law (Dkt. No. 215)

This motion is hereby DENIED. Plaintiff has failed to cite any authority for the order he seeks, and the court has already determined that he is not entitled to recover damages from Compliant. See Hutchins v. Cardiac Science, Inc., No. 04-30126, 2006 WL 2789866, at *7-12 (D. Mass. Sept. 27, 2006) (allowing Compliant's motion for summary judgment).

2. Plaintiff's Motion Requesting that this Court Take Judicial Notice that Case No. CV04540066 has been Removed to the United States District Court for Northern Ohio (Dkt. No. 219)

This motion is hereby DENIED, without prejudice. On September 26, 2006, the court denied Plaintiff's previous request for judicial notice of removal, stating "If removal was accomplished, which defendant denies, the court may take judicial notice of the removal if necessary. No reason to do this exists now." The following day, September 27, 2006, the court allowed Compliant's motion for summary judgment on Plaintiff's breach of contract claim based on the plain language of the 1994 License Agreement, as well as the doctrine of res judicata. Consequently, whether Case No. CV04540066 has been removed to a federal court in Ohio or remains on appeal before an Ohio appellate court is irrelevant, and it remains unnecessary to take judicial

notice of the status of this case.

3. Plaintiff's Motion for a Declaratory Judgement Asserting Plaintiff's Continued Ownership of Intellectual Properties (Dkt. No. 220)

This motion is hereby DENIED. Plaintiff has not identified a "definite and concrete" controversy, "touching the legal relations of parties having adverse legal interests." Metropolitan Life Ins. Co. v. Ditmore, 729 F.2d 1, 6 (1st Cir. 1984) (citing Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937)); see also Hutchins, 2006 WL 2789866, at *16 (denying Plaintiff's motion for a declaratory judgment asserting him to be the sole owner of copyright registration numbers Txu-213-859, Txu-210-208, U.S. Patent Reexamination No. 34,800, U.S. Patent No. 5,913,685, and the registered trademark "CPR Prompt®").

4. Plaintiff's Motion for Relief from Order to Enjoin (Dkt. No. 222)

This motion has not been opposed and is hereby ALLOWED.

5. Plaintiff's Motion for a Declaratory Judgment Asserting Plaintiff's Conduct in Filing the Complaint Does Not Constitute Tortious Interference (Dkt. No. 223)

This motion is hereby DENIED, as moot. See ruling on Dkt. No. 225, infra (allowing Complient's motion for dismissal of its tortious interference counterclaim against Plaintiff).

6. Complient's Motion for Dismissal Without Prejudice (Dkt. No. 225)

This motion has not been opposed and is hereby ALLOWED.

7. Plaintiff's Motion for Relief from Summary Judgment Pursuant to Rule 60(b)(2) (Dkt. No. 226)

Compliant's opposition will be filed by October 31, 2006. The court will thereafter rule on the motion, on the papers.

8. Compliant's Motion for Judicial Notice of Order of Remand (Dkt. No. 230)

This motion is hereby DENIED without prejudice for the reasons set forth above in the ruling on Dkt. No. 220.

9. Plaintiff's Motion for Judicial Notice of Appeal Case No. 88877 Court of Appeals of Ohio (Dkt. No. 234)

This motion is hereby DENIED without prejudice for the reasons set forth above in the ruling on Dkt. No. 220.

10. Compliant's Motion for Leave for Attorney to Participate in Status Conference by Telephone (Dkt. No. 239)

This motion has not been opposed and is hereby ALLOWED.
It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge